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SENATE

{ REPORT  
No. 706

### AMENDING THE ACT TO ESTABLISH A NATIONAL ARCHIVES OF THE UNITED STATES GOVERNMENT

JULY 23 (legislative day, JULY 16), 1947.—Ordered to be printed

Mr. O'CONOR, from the Committee on Civil Service, submitted the  
following

### REPORT

[To accompany H. R. 1350]

The Committee on Civil Service, to whom was referred the bill (H. R. 1350) to amend the act entitled "An act to establish a National Archives of the United States Government, and for other purposes," having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### STATEMENT

The primary purpose of this bill is to facilitate the transfer to the custody of the Archivist of certain collections of permanently valuable records that are no longer needed in conducting the current business of agencies and that are occupying space urgently needed for other purposes, reduce duplication of personnel, and simplify procedures for record control.

#### NEED FOR LEGISLATION

(a) The existing proviso of section 3 of the National Archives Act that limits the validity of restrictions that may be imposed by the head of any agency on the use of records transferred from his agency to the custody of the Archivist to a period "not exceeding in duration his tenure of that office" is objectionable to many departments and agencies, among them the Post Office Department, the Department of the Interior, and the Department of Commerce. In their opinion, such restrictions on the use of records imposed by the heads of agencies should continue in force and effect until such time as the head of the agency from which the records were transferred agrees to their modification or removal. Although it is the policy of the present Archivist to extend such restrictions following the expiration of the tenure of office of the official who imposed them until his successor has been offered an opportunity to renew or modify them, he is not, nor will

his successor be, under any legal obligation to do so. The amendment to section 3 would require restrictions imposed by heads of agencies on the use of records transferred from their custody to that of the Archivist to remain in force and effect until such time as they or their successors agree to their modification or removal unless the existence of the agency shall have been terminated.

The language of the present proviso in section 3 of the National Archives Act has been interpreted to mean that the head of an agency may, at any time, place restrictions on the use of records transferred from the custody of his agency to that of the Archivist. In the opinion of the Archivist, the heads of agencies should be permitted to impose such restrictions only prior to, or at the time of, the actual transfer of the records to his custody. Otherwise it would be possible for the head of an agency to place restrictions on the use of records previously transferred by him or his predecessors to the custody of the Archivist of such a nature that, had they been applicable at the time the records were offered for transfer, the Archivist would have refused to requisition the records for transfer. The amendment to section 3 would authorize the heads of agencies to impose restrictions deemed to be required in the public interest on the use of records transferred to the custody of the Archivist only prior to or at the time of their physical transfer.

(b) The use of numerous collections of Federal records is subject to certain permissive and restrictive statutory provisions that are applicable generally to the head of the agency, but in some instances also to the employees of the agency, which created or received them. Though the National Archives Act authorized the Archivist of the United States—

to make regulations for the \* \* \* use \* \* \* of material deposited in the National Archives Building—

considerable doubt exists as to whether the applicability of such permissive and restrictive statutory provisions would be extended to the Archivist of the United States and to employees of the National Archives in the event that the records to which they relate are transferred to the National Archives. There are collections of records in the custody of numerous agencies that are no longer needed for conducting the current business of those agencies, that should be permanently preserved, and that are occupying space that is needed for other purposes. The use of these records is subject to permissive and restrictive statutory provisions that are applicable to the heads and employees of those agencies. Unless the applicability of these provisions is extended to include the Archivist of the United States and employees of the National Archives the transfer of such records to the National Archives would create an extremely cumbersome and unsatisfactory situation from the standpoint of both the agencies and the National Archives; and yet their retention by the agencies would prevent the space now occupied by them from being used for more urgently needed purposes. Section 6a of this bill would clarify the existing situation by providing that the applicability of any permissive or restrictive statutory provisions regarding the use of any body of records shall, when that body of records is transferred to the National Archives, include not only the head and employees of the agency from which such records are transferred but likewise the Archivist of the United States and employees of the National Archives, respectively.

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(c) The heads of some departments and agencies of the Government have some doubt about their authority to make certifications and determinations on the basis of records of their agencies that have been transferred to the custody of the Archivist. It appears desirable, therefore, in order to establish their authority to make such certifications and determinations on the basis of records that have been transferred from their agencies to the custody of the Archivist, to amend the existing law by inserting therein section 8a of this bill. This new section will facilitate the handling of certifications of military services on the basis of records that have been or may in the future be transferred to the custody of the Archivist.

In a written communication from the National Archives to the chairman of this committee dated January 24, 1947, adoption of this legislation was urged, and the following is quoted from their letter:

The bill has been approved by the National Archives Council, of which, by the way, you are now a member, and has just been reapproved by the Bureau of the Budget as being in accord with the program of the President. There is no known opposition to the proposed bill.

## CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SEC. 3. All archives or records belonging to the Government of the United States (legislative, executive, judicial, and other) shall be under the charge and superintendence of the Archivist to this extent: He shall have full power to inspect personally or by deputy the records of any agency of the United States Government whatsoever and wheresoever located, and shall have the full cooperation of any and all persons in charge of such records in such inspections, and to requisition for transfer to the National Archives Establishment such archives, or records as the National Archives Council, hereafter provided shall approve for such transfer, and he shall have authority to make regulations for the arrangement, custody, use, and withdrawal of material deposited in the National Archives Building: *Provided, That whenever the head of any agency shall specify in writing restrictions on the use or examination of records being considered for transfer from his custody to that of the Archivist that appear to him to be necessary or desirable in the public interest, the Archivist shall impose such restrictions on such of the records as are transferred to this custody; and restrictions so imposed shall not be removed or relaxed by the Archivist without the concurrence in writing of the head of the agency from which the material shall have been transferred unless the existence of that agency shall have been terminated: And provided further, That restrictions on the use or examination of records in the custody of the Archivist heretofore imposed and now in force and effect under the terms of section 3 of the National Archives Act, approved June 19, 1934, shall continue in force and effect regardless of the expiration of the tenure of office of the official who imposed them but may be removed or relaxed by the Archivist with the concurrence in writing of the head of the agency from which the material has been transferred or by the Archivist alone if the existence of that agency shall have been terminated.*

SEC. 6a. Whenever any records, the use of which is subject to statutory limitations and restrictions are transferred to the custody of the Archivist of the United States, permissive and restrictive statutory provisions with respect to the examination and use of such records applicable to the head of the agency having custody of them or to employees of that agency shall thereafter likewise be applicable to the Archivist of the United States and to the employees of the National Archives Establishment, respectively.

SEC. 8a. Any official of the United States Government who is authorized to make certifications or determinations on the basis of records in his custody is hereby authorized to make certifications or determinations on the basis of records that have been transferred by him or his predecessors to the custody of the Archivist of the United States.